

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
v.)	
)	
COOPER INDUSTRIES, LLC)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

INTRODUCTION

1. This is a civil action brought pursuant to Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607(a) and 9613(g)(2). The United States seeks to recover response costs incurred and to be incurred by the United States as a result of releases of hazardous substances at the McGraw-Edison Superfund Site, located in Centerville, Appanoose County, Iowa (the "Site"). Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States also seeks a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the Defendants pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or threatened releases of hazardous substances that give rise to the claims in this action occurred in this judicial district.

DEFENDANT

4. McGraw-Edison Company operated the Site at the time of disposal of hazardous substances at the Site within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). In 1985, Defendant Cooper Industries, through a subsidiary, purchased all of the stock of McGraw-Edison Company. In 2005, Cooper succeeded to McGraw-Edison's liabilities relating to the Site. Cooper is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and is the current owner and/or operator of a "facility" within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

BACKGROUND

5. The McGraw-Edison Superfund Site is comprised of approximately thirteen acres near Highway 5 in a mixed industrial and residential area in Centerville, Appanoose County, Iowa. McGraw-Edison operated a manufacturing facility at the Site beginning in 1965, manufacturing toasters and toaster ovens under the Sunbeam brand name. McGraw-Edison closed the facility in 1976. McGraw-Edison sold the facility to Peabody International Corporation (Peabody) in 1980, and Peabody rented the facility for storage of grain and finished goods. Cooper Industries,

Inc., through a subsidiary, purchased all of the stock of McGraw-Edison in 1985. In 1990, Cooper bought the facility back from Peabody.

6. Manufacturing operations at the facility included nickel and chromium plating, producing plating sludges containing nickel, chromium, and other heavy metals. Trichloroethene (TCE), a chlorinated solvent, was used to clean the metal plating equipment. Wastewater was discharged to the Centerville sanitary sewer system and plating sludges were stored in lagoons on-site. Sulfuric acid, sodium hydroxide, and other hazardous substances used in the manufacturing process, and their associated wastestreams, also were stored on-site.

7. In 1986, the Iowa Department of Natural Resources performed a site assessment at the facility and reported the presence of certain hazardous substances at the Site, including two lagoons containing chrome plating sludges, a large tank containing TCE, and drums containing sulfuric acid and sodium hydroxide. The United States Environmental Protection Agency (EPA) performed initial sampling of the lagoon sludges and on-site sediments on January 27, 1987. Analysis of these samples revealed significant concentrations of heavy metals in the lagoon sludges, including chromium, cobalt, and nickel. Analysis of on-site surface water samples also revealed the presence of those metals in surface water on the Site.

8. EPA has incurred, and continues to incur, CERCLA response costs, primarily for oversight of Cooper's implementation of the UAO. EPA anticipates that it will continue to incur such costs for the duration of the remedial action.

LAW GOVERNING THE UNITED STATES' CLAIMS UNDER CERCLA

9. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –

(1) the owner and operator of a vessel or a facility,
(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan. . . .

10. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides:

(2) In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

GENERAL ALLEGATIONS

11. The McGraw-Edison Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12. There have been, and continue to be, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), releases and threatened releases of “hazardous substances,” within the meaning of Sections 101(14) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9607(a), into the environment at and from the Site.

13. As a result of the releases or threatened releases at or from the Site, the United States has incurred “response” costs within the meaning of Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the releases or threatened releases at or from the Site. These costs may include, but are not limited to, costs incurred to

investigate, monitor, survey, test, and otherwise gather information at the Site, and to oversee and implement remedial actions at the Site. In addition, these costs include costs incurred by the United States for planning, legal, and other activities necessary or appropriate to plan and direct response actions, to recover the costs of response actions, and for enforcement purposes, relating to the Site. The United States will continue to incur response costs in connection with the Site.

14. As a result of such response actions, as of August 1, 2006, the United States had incurred approximately \$200,000 in unreimbursed response costs. The response costs incurred by the United States in connection with the Site were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

CLAIM FOR RELIEF:
SECTION 107(a) OF CERCLA

15. The allegations set forth at paragraphs 1 through 14 are realleged and incorporated herein by reference.

16. Defendant Cooper is within the class of persons described as liable parties in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Accordingly, Defendant is liable for response costs incurred and to be incurred by the United States in response to releases of hazardous substances at the Site, including related oversight costs and related indirect, administrative, investigative, and enforcement costs.

17. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States is entitled to recover interest on the response costs it has incurred.

18. Defendant has not reimbursed all of the costs incurred by United States responding to the release of hazardous substances at the Site.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

- A. Enter judgment in favor of the United States and against Defendant for unreimbursed response costs incurred by the United States Environmental Protection Agency in connection with the Site, plus interest;
- B. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter a “declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs. . . ;” and
- C. Grant such other relief as the Court deems appropriate.

Respectfully submitted, /

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